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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/813,326	03/30/2004	Per Gisle Djupesland	44508-058	5109
21890 7590 05/03/2010 PROSKAUER ROSE LLP One International Place Boston, MA 02110				
EXAMINER MENDOZA, MICHAEL G				
ART UNIT 3734		PAPER NUMBER		
NOTIFICATION DATE 05/03/2010		DELIVERY MODE ELECTRONIC		

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

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**Advisory Action  
Before the Filing of an Appeal Brief**

**Application No.**

10/813,326

**Applicant(s)**

DJUPESLAND, PER GISLE

**Examiner**

MICHAEL G. MENDOZA

**Art Unit**

3734

**--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**

THE REPLY FILED 22 March 2010 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☐ The period for reply expires \_\_\_\_\_ months from the mailing date of the final rejection.  
b) ☒ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.  
Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**NOTICE OF APPEAL**

2. ☐ The Notice of Appeal was filed on \_\_\_\_\_. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

**AMENDMENTS**

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because  
(a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);  
(b) ☐ They raise the issue of new matter (see NOTE below);  
(c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or  
(d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: \_\_\_\_\_. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).  
5. ☐ Applicant's reply has overcome the following rejection(s): \_\_\_\_\_.  
6. ☐ Newly proposed or amended claim(s) \_\_\_\_\_ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).  
7. ☐ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.  
The status of the claim(s) is (or will be) as follows:  
Claim(s) allowed: 9.  
Claim(s) objected to: 7, 12 and 13.  
Claim(s) rejected: 5-8, 11, 14-18 and 40-76.  
Claim(s) withdrawn from consideration: \_\_\_\_\_.

**AFFIDAVIT OR OTHER EVIDENCE**

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).  
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing a good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).  
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

**REQUEST FOR RECONSIDERATION/OTHER**

11. ☐ The request for reconsideration has been considered but does NOT place the application in condition for allowance because: \_\_\_\_\_.  
12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08) Paper No(s). \_\_\_\_\_  
13. ☒ Other: See Continuation Sheet.

/TODD E. MANAHAN/  
Supervisory Patent Examiner, Art Unit 3734

Continuation of 13. Other:

The applicant argues the correctness of the finality of the office action. The applicant has had the opportunity to argue the rejections in response to the rejections in the office action of 10/20/2009. Merely arguing the Finality of a rejection, does not excuse applicant of filing a complete response to all outstanding objections, rejections and other requirements set forth in the outstanding office action. Since the applicant has been given the opportunity to argue the rejections and the rejections have already been applied twice, the status of the finality of the office action 1/22/2010 stands.

The applicant argues that Seidel does not seal one of the nostrils and does not teach closing the oropharyngeal velum. The examiner disagrees. A seal is formed when end D is inserted into the nostril. Because end D is inserted into the nostril the end with hinder/prevent escape of gas through the one nostril. As to the limitation of closing the oropharyngeal velum, Seidel teaches exhaling through the mouth to deliver a substance through end D. It would be inherent that the velum be closed since the velum is closed by exhalation through the mouth.

As to claims 11 and 67-74 rejected by Seidel, the applicant argues that the act of plug a nostril not receiving treatment when using a nasal treatment requiring only one nostril does not read on the limitation of providing a flow resistance to gas flow exiting the other nostril. The examiner disagrees. The act of close one nostril causes resistance to gas flow out of the nostril. As defined in Merriam-Webster Online Dictionary, resistance is an actor or instance of resisting. Closing one nostril resists the gas flow out of the nostril and therefore reads on the limitation. Because one nostril is closed and on nostril is receiving a flow of gas, and positive pressure would be created in the nasal airway.

As to claims 11, 40-42, 47, 52, 55, 67-72, 75, and 76 rejected by Harding, the applicant argues that the act of plug a nostril not receiving treatment when using a nasal treatment requiring only one nostril does not read on the limitation of providing a flow resistance to gas flow exiting the other nostril. The examiner disagrees. The act of close one nostril causes resistance to gas flow out of the nostril. As defined in Merriam-Webster Online Dictionary, resistance is an actor or instance of resisting. Closing one nostril resists the gas flow out of the nostril and therefore reads on the limitation. Because one nostril is closed and on nostril is receiving a flow of gas, and positive pressure would be created in the nasal airway.

As to claims 11, 14-17, 40-47, 52-55, 58, 61-63, 75, and 76 rejected by Keldman et al. in view of Chantrel, the applicant argues that the act of plug a nostril not receiving treatment when using a nasal treatment requiring only one nostril does not read on the limitation of providing a flow resistance to gas flow exiting the other nostril. The examiner disagrees. The act of close one nostril causes resistance to gas flow out of the nostril. As defined in Merriam-Webster Online Dictionary, resistance is an actor or instance of resisting. Closing one nostril resists the gas flow out of the nostril and therefore reads on the limitation. Because one nostril is closed and on nostril is receiving a flow of gas, and positive pressure would be created in the nasal airway. The applicant also argues that the combination of Keldman et al. with Chantrel would have required a fundamental change in the operation of the base device. The examiner disagrees. The use of the seal of Chantrel only requires the insertion of the seal into the open end of nasal piece 12. The insertion of the seal in no way changes the operation of the base device. The device will still be inserted into a nostril, and the user would still use exhalation to provide flow..